

**Overnite Transportation Company and Highway, City and Air Freight Drivers, Dockmen, Dairy Workers and Helpers, St. Louis and Vicinity Missouri, Marine Officers Association, the Navigable Inland Waterway Systems of the United States Local 600, affiliated with International Brotherhood of Teamsters, AFL-CIO.**  
Case 14-CA-23785

December 14, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND TRUESDALE

Pursuant to a charge filed by the Union on September 26, 1995, the General Counsel of the National Labor Relations Board issued a complaint on October 13, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 14-RC-11501. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and submitting affirmative defenses.

On November 8, 1995, the General Counsel filed a Motion for Summary Judgment. On November 9, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 24, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response the Respondent admits that the Union was certified as the exclusive bargaining representative of the unit, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.<sup>1</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues requiring a hearing with respect to the Respondent's alleged refusal to bargain. The complaint alleges that the Union requested the Respondent to bargain by letter dated September 10, 1995, and that the Respondent refused by letter dated September 15, 1995. The Respondent's answer admits that the Union sent it a letter dated September 10, 1995, and that it sent a letter to the Union dated September 15, 1995, but otherwise denies the foregoing allegations on the ground that the letters speak for themselves. In addition, the Respondent's answer denies the complaint allegation that it has refused to bargain with the Union as the exclusive bargaining representative of the unit since September 15, 1995.

A copy of both the Union's September 10 letter and the Respondent's September 15 letter is attached to the motion for summary judgment. The Union's September 10 letter, inter alia, insisted that the Respondent fulfill all of its bargaining obligations, and specifically demanded immediate bargaining over the decision and effects of certain changes the company was considering. The Respondent's September 15 letter acknowledged the Union's September 10 letter and advised the Union that it believed the Union's certification was legally incorrect and improper, that it was engaging in a technical refusal to bargain in order to test the certification in the court of appeals, and that the Respondent was for that reason refusing to bargain with the Union over a collective-bargaining agreement. The Respondent has not disputed the authenticity of the foregoing letters. Indeed, as indicated above, the Respondent admits that they were sent. Further, the Respondent has repeated its belief that the Union's certification was improper in its answer to the complaint and response to the notice to show cause. In these circumstances, we find that the Respondent has in fact refused to recognize and bargain with the Union since September 15, 1995, as alleged in the complaint.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times the Respondent, a Virginia corporation with terminals located throughout the United States including a terminal located in St. Louis, Missouri, has been engaged in the distribution of freight. During the 12-month period ending September 30, 1995, the Respondent, in conducting its business oper-

<sup>1</sup> In its response to the notice to show cause, the Respondent also reiterates its request that the Regional Director transmit to the Board copies of all affidavits tendered by the Union in the investigation of the objections. The Respondent requests that, in the event the Regional Director failed to include the affidavits in the record, the Board order the Regional Director to do so. We deny the Respondent's request. See Sec. 102.69(g)(1)(ii) of the Board's rules, and *Frontier Hotel*, supra.

ations, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Missouri directly to points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held February 28, 1995, the Union was certified on June 16, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time city drivers, dockmen, road drivers and mechanics employed at Respondent's St. Louis, Missouri terminal, EXCLUDING all office clerical and professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

By letter dated September 10, 1995, the Union requested the Respondent to bargain, and, by letter dated September 15, 1995, the Respondent refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing on and after September 15, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817

(1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Overnite Transportation Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with the Highway, City and Air Freight Drivers, Dockmen, Dairy Workers and Helpers, St. Louis and Vicinity, Missouri, Marine Officers Association, the Navigable Inland Waterway Systems of the United States Local 600, affiliated with International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time city drivers, dockmen, road drivers and mechanics employed at Respondent's St. Louis, Missouri terminal, EXCLUDING all office clerical and professional employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 14 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Highway, City and Air Freight Drivers, Dockmen, Dairy Workers and Helpers, St. Louis and Vicinity, Missouri, Marine Officers Association, the Navigable Inland Waterway Systems of the United States Local 600, affiliated with International Brotherhood of Teamsters, AFL-CIO as

the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time city drivers, dockmen, road drivers and mechanics employed at Respondent's St. Louis, Missouri terminal, EXCLUDING all office clerical and professional employees, guards, and supervisors as defined in the Act.

OVERNITE TRANSPORTATION COMPANY